BOOK REVIEWS.

ABBOTT'S FORMS OF PLEADINGS. By AUSTIN ABBOTT, LL.D. Vol. I. New York: Baker, Voorhis & Co. 1898.

The preface to this book is written by Professor Carlos C. Alden, of the Law Department of the New York University, who completed it for publication after the decease of the distinguished author.

He states that Mr. Abbott's labors on the materials for the work were continuous until the time of his death and his plans have been adhered to by his surviving associate.

Probably no American writer has done so much for the practitioner as has been done by one whose Digests, Reports and Briefs, written by himself, (or jointly with his brother Benjamin V. Abbott), fill so many volumes. One need only glance on the shelves of any large Law Library at the "Old Series," "New Series," "Abbott's New Cases," in order to realize and admire the energy and industry of such a student and worker, while an examination of his other books confirms and increases the admiration. The present forms, though adapted in some respects to the practice of common law states, were prepared with special reference "To the Code System of Civil Procedure."

It is interesting for a common law lawyer to consider the change wrought by the Code of Procedure in New York. This was prepared by three able lawyers, Messrs. Loomis, Graham and Field, who were appointed Commissioners "to revise, to reform, simplify and abridge the rules of practice, pleadings, forms of procedure of the Courts of Record of this State," and to report thereon to the Legislature. Their report was made in 1848, and the statute recommended by them was duly enacted. The intention was to make radical changes by the adoption of the new procedure—to provide for the abolition of the then present forms of actions and pleadings in cases at common law, for the uniform course of proceedings in all cases, whether of legal or equitable cognizance, and for the abandonment of all Latin and other foreign tongues so far as the same should be deemed practicable, and of any form of proceedings not necessary to ascertain or preserve the rights of the parties.

The reception of what was at that time a novel practice is shown in the address of Mr. Justice Miller, of the United States Supreme Court to the Bar Association of the State of New York (Western Jurist, p. 55, 1879), who referred to the fact that the main features of the Code of Practice of that State had been adopted by the Legislatures of two-thirds of the States and Territories of the Union —and the learned judge spoke of the feeling of lawyers upon the subject. "I am sensible," he said, "that it is a Live Subject, and

one in regard to which men have become partisans with a zeal almost deserving the name of bigotry." He then states his belief in the New System: "The object of all pleadings in the courts, the objects of the courts themselves, is to ascertain the truth in regard to controverted facts, and the law applicable to these facts. If abandoning any *a priori* discussion of the superiority of the Code System, or the Common Law Systems of Pleadings, for these purposes, we look to the results as they are seen in the reports of cases decided in the higher courts, I think it will be found that a much larger proportion of cases were argued and decided in these courts on mere questions of form and pleadings and technicalities in practice, which determine nothing of the merits of the cases, while the old forms prevailed, than since they have been abolished. Many, very many, causes went to the Appellate Courts and were there decided on purely technical questions as to the form of the action, or the form of the plea, which neither touched nor affected the very right of the matter. And while questions of pleading are even under the code system sometimes carried to the Court of Appeal as they may be under any system, I venture to say that taking the volumes of reports of all the states which have adopted the Code, and comparing these volumes as to that class of cases before and since its adoption, its advocates will have every reason to be satisfied with the reform." "I take the liberty of saying, also, that the principal source of the contests over the Code of Procedure was the hostility of the lawyers and those who then occupied the bench. All of these had been bred as lawyers under a system of pleading, very technical, very difficult to understand, which constituted of itself a branch of learning supposed to be very abstruse and very valuable. It was one of the titles to reputation and success in the profession, that a man was a good special pleader. To find, as many of these erroneously supposed, all this learning of a life-time rendered useless was more than human nature could bear with composure."

On the other hand, it may well be contended by the loyal adherent of the ancient pleading that this Code System has certainly not affected *simplicity*, and he may turn with some confidence to the New York decisions upon points that have arisen from the effort to substitute it for the old forms. In point of fact, however, "Law Reform," introduced in the Empire State, "came to stay," and its actual adoption extended into many states, while its influence has been felt by all.

Whatever may have been the opposition at first, the Code System has existed for fifty years and questions without end have been raised and still are raised under it.

To the pleader who must conform his Complaints or Answers to the Civil Code of Procedure the present volume will be an invaluable guide, and, indeed, much help may be derived from it by one practicing in a Common Law State. We notice the force of the remarks by Professor Alden: "In actual practice the pleader is apt

to err on the side of caution and to indulge in prolixity of statement. The precedents here given could in many instances be shortened without rendering them actually insufficient. But, however desirable conciseness in pleading may be, it has been deemed preferable in the preparation of these forms to avoid such brevity as might, perhaps, invite question or require argument in their support." As we read, the mind turns to the thought recently repeated by Judge Sulzberger and stated with his usual vigor and clearness in his address ("Special Issues and Side Issues"), in April, 1898, before the Law Academy of Philadelphia. "This new system, however, must not be mistaken for general pleading. It is special pleading in its essence free from embarrassing forms. Many have believed, and some may still believe, that this new style of special pleading is a matter of the greatest ease. To such minds all difficulties lie in the forms of expression, whereas, in truth, the greatest difficulties must ever be in forms of thought."

Mr. Abbott himself, while singularly careful and minute in his accuracy, down to the jots and tittles of technical expression, took a broad view of the whole subject. In his preface to his "Trial Brief," 1891, he said: "It will be at once seen how useful is the light which the substantial rules of Common Law Pleading and Code Pleading throw upon each other, and also that which the decisions in various states throw upon characteristic provisions of the statutes of other states." Now we may come directly to the forms in the volume before us with its division into chapters which arrange the topics in a natural and regular sequence. It begins with the Formal Part of Pleadings, and then the Designation of Particular Classes of Persons; as, Associations, Bankers, Corporations, Executors and Administrators, Husbands and Wives, Infants, Lunatics, Married Women, Partners, etc. Complaints follow in numerous actions, beginning with money lent, paid, had and received, in Chapter III., and ending in Chapter XXXVII., with Complaints in Actions for Waste. It would seem as if every note and chord of the legal instruments, within the limits of the subject, had been tried and the score carefully written out.

It is curious to observe how much of the old common law pleadings has been crystallized and is found in these Code Precedents, notably in actions for negligence. In these we find the ancient lingo, "Carelessly," "Negligently," etc., still in vogue. If there were space we would like to give in full from page 238 (Form 247), the complaint on a promissory note, endorsee against endorser, and apply to it the requirements of the Supreme Court of Pennsylvania for the "Statement," in the like case under the Act of 1887. (See *Peale* v. *Addicks*, 174 Pa. 543.)

It would appear that many of the forms in this volume, if not adapted to the practice in Pennsylvania, may be extremely useful in drawing "Statements," if the pleader use proper care and discrimination. In brief, we may sum up the result of examination

of this work with the conviction that the pleadings prepared by a writer of such experience and ability, revised and perfected by the skillful editor of this posthumous work, may be strongly commended not only to all men in active practice who need such a book for the exigencies of every day's business, but to those who have a scientific love for accurate and concise averments.

THE CHURCH AND THE LAW, with Special Reference to Ecclesiastical Law in the United States. By HUMPHREY J. DESMOND, of the Wisconsin Bar. Chicago: Callaghan & Co. 1898.

Mr. Desmond's aim, he remarks in the preface, "has been to state the general principles of the law under the various topics touched upon, rather than to deal with details or attempt to summarize statutory provisions." In spite of this, however, and of the fact that he has condensed his subject into one hundred and thirty-three pages, he discloses an acquaintance with the church law in all the states of the Union, and furnishes practical information on most questions of pregnant importance to priest and minister.

To the lawyer the book appeals as enabling him "to refer conveniently to a range of topics not heretofore included in a single volume." It will not, by any means, fill the place of a digest, but it reveals the scope and frame-work of church law in this country, and does this better, for one who is preparing a case on some branch of the subject, than might an attempt at an exhaustive work.

The author asserts that "the *point of contact* between the Church and the Law is always kept in view; and matters extraneous to this plan of treatment are omitted." This accounts for his unusually terse style. It suggests, moreover, the theory on which he wrote and which crops out in every chapter, namely, that Lord Hale's maxim, "Christianity is parcel of the laws of England" is limited in America to mean that the Christian religion and its ordinances are entitled to respect and protection, but only as the people's acknowledged faith. "Further than this the law does not protect it," Gibson, J., of Pennsylvania, is quoted as declaring; "and the only excuse for the maxim, in the opinion of an Ohio authority cited, is the fact that it is a Christian country, and that its constitution and laws are made by a Christian people (23 Ohio St. 211)." Reviling Christianity, therefore, blasphemy and similar offenses are regarded by the law as temporal, and punished, not because Christianity is part of our law, but because such words tend to provoke a breach of the peace. Sunday laws are enacted as civil regulations for the government of man as a member of society. "All agree," said the Supreme Court of Pennsylvania (8 Pa. 312), "that for the well-being of society, periods of rest are absolutely necessary. These periods must recur at stated intervals that the mass of the people may enjoy a respite from labor at the same time.